

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 1530/2007

NICHOLAS DLAMINI

Applicant

And

DAISY DLAMINI AND 5 OTHERS

Respondents

Coram

S.B. MAPHALALA - J

For the Applicant

MR. P. SHILUBANE

For the Respondent

MR. N. MABUZA

JUDGMENT 12th
February 2009

[1] The only issue for decision presently is an application for condonation of the late filing of the Defendant's plea. The said application is based on the affidavit of the 6th Defendant, one Maxwell Dlamini.

[2] The trite principle of law in such instances is that the court may grant condonation for non-compliance, where valid and justifiable reasons exist why compliance did not occur and where good and sufficient cause has been shown for the relief sought, (see *General Accident Insurance Co. S.A. Ltd vs Zampeli 1988 (4) S.A. 407(C)*).

[3] The Plaintiff, however, contends that it is common cause that this is a very old matter, dating back to the year 2000 and in view of this fact it is quite clear that the Defendants had always had their defence to the Plaintiffs claim and the reasons alleged in paragraph 5 of their Founding Affidavit could not in any way have prevented the filing of the amended plea within time. Further, that the court should consider the fact that the Defendant's attorneys consented to the order granted by this court on the 1st August 2008. The Defendants have failed to show good and sufficient cause for the relief sought, in as much as they do not have a *bona fide* defence to the Plaintiffs claim. The plea is entered solely for the purpose of stalling the proceedings to the detriment of the Plaintiff who is deprived of his right to possess and enjoy the property.

[4] Furthermore, Plaintiff contends that Defendants cannot plead that they are co-owners of the property as if flies in the face of the law pertaining to the registration of land, ("the best evidence in proof of ownership of immovable property is the title deed concerned" - *Section 15 of the Deeds Registry Act 37 of 1968*).

[5] On the other hand the Defendant has painted a different picture than the one portrayed by the Plaintiff. That this matter dates back to 2007, Plaintiff wants to mislead the court and cloud issues to get his way. The case number clearly shows when this matter was brought to court. The matter referred to (Case Number 559/2000) was based on a different cause of action altogether and does not arise herein. The view that it has any bearing *in casu* is, ill-conceived. That matter is *res judicata*. The Defendants are not estopped from raising their defence, particularly since new evidence has come to the fore.

[5] Having considered the arguments of the parties I am inclined to agree with the Defendants contentions and grant condonation sought. I am satisfied that good cause exists for the grant of such condonation. It would appear to me further that the Defendants are correct that the matter referred to (Case number 559/2000) was based on a different cause of action altogether and does not arise herein.

[6] In the result, for the afore-going reasons the application for condonation granted and costs to be costs in the trial.

A handwritten signature in black ink, consisting of a large, stylized 'S' with a smaller 'M' inside it, and a horizontal line crossing through the middle.

S.B. MAPHALALA
PRINCIPAL JUDGE